IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

RSA.No. 131 of 2007()

A.S.20/2004 OF ADDL.SUB JUDGE, IRINJALAKUDA
O.S.5/02 OF MUNSIFF MAGISTRATE COURT, CHALAKUDY

APPELLANT/APPELLANT/1ST DEFENDANT

GIRILAL, S/O. CHALIAPARAMBIL KUTTAPPAN,
CHALIAPARAMBIL, ADICHILLI DESOM,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.A.C.DEVY

RESPONDENTS/RESPONDENTS/PLAINTIFF & 2ND DEFENDANT

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1. MADHAVI, D/O. POTTAPARAMBIL KUTTAPPAN,
POTTAPARAMBIL, MUNNURPPILLY DESOM,
KARUKUTTY VILLAGE, MUKUNDAPURAM TALUK.

2. VALSALA, W/O. CHALIAPARAMBIL GIRILAL,
ADICHILLI DESOM, MELOOR VILLAGE,
MUKUNDAPURAM TALUK.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.243/07 IN RSA 131/07

DISMISSED

1/2/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO. 131 OF 2007

Dated 1st February 2007

J U D G M E N T

Appellant is first defendant in O.S.5/2002 on the file of Munsiff court, Chalakudy. First respondent is the plaintiff. Suit was filed for realisation of Rs.40,000/-, which according to first respondent was received by appellant on her behalf, when suit for realisation of advance amount paid by her, was settled and was paid by defendant in that suit and was not paid by appellant in spite of repeated demands. Case of first respondent was that she was a made-servant of appellant and in that capacity she authorised appellant to prosecute the suit for return of the advance paid under an agreement for sale and when the suit was settled, amount due to her was received by appellant on her behalf and was not paid to her in spite of demand. A decree for realisation of the amount was sought. Appellant filed a written statement contending that he did not receive any amount on behalf of first

respondent and he was not aware of the suit or the settlement and he was on inimical terms with Circle Inspector of Police and O.S.1473/99 was filed before Munsiff court, Irinjalakuda by appellant against Circle Inspector who threatened appellant and suit was filed due to the enmity and he is not liable to pay any amount to first respondent. Learned Munsiff framed necessary issues. Apart from first respondent as PW1, she examined PW2, the counsel who filed O.S.59/98 before Munsiff court, Aluva for realisation of amount due from PW4 Krishnankutty, PW3 the Circle Inspector and PW4. Ext.A1 series were marked on her side. Appellant was examined as DW1. Exts.B1 to B4 were also marked. Learned Munsiff on the evidence found that evidence of Pws.1, 2 and 4 establish that O.S.59/98 was filed by first respondent against PW4, for return of the advance amount paid pursuant to agreement for sale and it was settled fixing Rs.40,000/- as the amount due to PW1 and it was paid by PW4 to PW2, to be paid to first respondent, as the case was being prosecuted on behalf of first respondent by appellant and Rs.40,000/- was received by appellant for first respondent. Trial court granted a decree as sought for. Appellant challenged the decree and judgment

before Additional Sub court, Irinjalakuda. Learned Sub Judge, on re-appreciation of evidence, confirmed the decree and judgment and dismissed the appeal which was challenged in this appeal.

2. Learned counsel appearing for appellant was heard.

3. Argument of learned counsel appearing for appellant is that there is absolutely no evidence to prove that appellant received any amount on behalf of first respondent and courts erred in accepting the evidence of Pws.2 and 4. It was argued that appellate court should not have accepted Exts.A2 and A3 the compromise petition and the compromise decree in O.S.59/98, behind back of the appellant at the appellate stage and should not have relied on those evidence. It was vehemently argued after elaborately taking through the evidence of Pws.1, 2 and 4 that courts below should not have accepted their evidence. Learned counsel also argued that as per evidence of PW2, the amount was paid through Advocate Sukumaran, who was not examined and such a case was not even pleaded in the plaint and when examined, first respondent deposed that she has no knowledge about all these things and in such circumstances, courts should not have accepted the

evidence.

4. Though Exts.A2 and A3 documents the compromise petition and compromise decree in O.S.59/98, the suit instituted by first respondent against PW4 before Munsiff court, Aluva and was settled were marked at the appellate stage stating that trial court omitted to mark them as seen from the judgment of those documents were produced before the trial court itself but were omitted to be shown as marked in the appendix of the judgment. In fact, judgment of learned Munsiff shows that the compromise petition and decree in O.S.59/98 were produced before the Munsiff and the decree was marked Ext.A3, though appendix of the judgment does not show Exts.A3 or A2. Learned Munsiff has in fact relied on those documents to find that the said suit was instituted as claimed by PW1 and it was settled as deposed by Pws.2 and 4. Therefore, reliance placed by learned Sub Judge on Ext.A2 and A3 cannot be said to be illegal or behind the back of appellant as canvassed by learned counsel.

5. Learned Munsiff and learned Sub Judge elaborately discussed the evidence of PW1, the first respondent, PW2 her counsel who filed O.S.59/98 and PW4 the defendant in that suit. Relying on their evidence

both courts found that Rs.40,000/- was paid by PW4 to appellant to be paid to first respondent pursuant to the settlement and that amount was in fact received by appellant. Though relying on inconsequential contradictions in the evidence of PW1, it was argued that PW1 is not aware of even the number of the suit or other details and did not speak anything about advocate Sukumaran when evidence of PW2 shows that the amount was paid through advocate Sukumaran. It was also argued that for the non examination of advocate Sukumaran evidence of PW2 or PW4 should not have been relied on. On going through the judgment I cannot agree with the submissions of learned counsel that appreciation of evidence was perverse.

6. PW1 is proved to be a made-servant of appellant. Evidence also establish that O.S.59/98 was filed by PW1 through PW2 the Advocate against PW4 for return of advance money. Exts.A2 and A3 corroborates the evidence of Pws.2 and 4 that the said suit was settled and Rs.40,000/- was paid by PW4 to the counsel appearing for first respondent to be paid to first respondent. Evidence of PW2 establish that that amount was received by appellant for first respondent. Learned Munsiff and learned Sub Judge on appreciation of evidence accepted

the evidence of Pws.1,2 and 4. I do not find any reason to hold that appreciation of evidence was not proper or perverse and against settled law. Evidence establish that Rs.40,000/- due to first respondent pursuant to Exts.A2 and A3 settlement and compromise decree and paid by PW4 was received by appellant. Appellant is liable to pay that amount to first respondent.

7. The inference of fact arrived at by the trial court and Appellate court is only a question of fact. This case does not involve a substantial question of law. The jurisdiction under Section 100 of Code of Civil Procedure cannot be exercised, in the absence of a substantial question of law involved in the case. Re-appreciation of evidence is not warranted when the trial court and First Appellate court accepted the evidence of Pws.2 and 4 and PW1.

Second appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.